IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 621 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI LEBABHAI SOJABHAI KHAIR & 8 - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1 - 9.
MR KT DAVE Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 15/12/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

cr.a621/05

1. The present appeal preferred by the appellants under sec. 374(2) of CrPC is directed against the judgment and order rendered by the ld. Addl. Sessions Judge, 4th Fast Track Court, Himatnagar in Sessions Case No. 158/2004 by which the ld. Judge has convicted the appellants and imposed the sentence to suffer u/s. 395 R/I for a period of 10 years and a fine of Rs. 5000/-, in default, further R/I for 3 months, under sec. 341 of IPC one month's S/I and fine of Rs. 500/-, in default, 15 days S/I, under sec. 504 of IPC one years S/I and fine of Rs. 500/-, in default, further imprisonment of 2 months and under sec. 435 of IPC, 5 years S/I and fine of Rs. 1000/-, in default, further S/I of two months. The ld. Judge further held that all the substantive sentences shall run concurrently.

2. The short facts giving rise to the present appeal are as under:

3. The appellants are charge-sheeted for the offences punishable under sec. 395, 341, 435, 504 read with sec. 114 of IPC as well as under sec. 135 of BP Act. As per the prosecution case, the appellants on 23.3.2002 at about 13.30 hrs. created

obstacles on the road going towards Kotadagadhi and Jotasan village with a view to prevent the vehicles from proceedings on the road. The complainant passed through the road at about 1.30 hrs in the after-noon. As soon as the complainant passed through the road, he was obstructed by the appellants who were armed with deadly weapons like swords, sticks etc. They started abusing the complainant and set on fire the Jeep car in which the complainant was traveling. The complainant was also robbed of Rs. 11,300/-. On the strength of the complaint given by Vazirkhan Fakirmahmad Shaikh dated 23.3.2002, the offence was registered against the appellants. The panchnama of the place of incident was prepared. The appellants were arrested. The statements of the witnesses were also recorded. On completion of the investigation, the appellants were charge-sheeted and produced before the ld. Metropolitan Magistrate, who in turn, committed the case to the Sessions Court as the case was exclusively triable by the Sessions Court. On the case being made over for trial before the sessions court, the same was numbered as Sessions Case No. 158/2004. The charge against the appellant was framed vide ex. 3 and the appellants pleaded not guilty to the charge leveled against them, therefore,

the matter was set down for fulfledged trial before the sessions court.

4. The prosecution has examined the following witnesses in order to prove the involvement of the appellants in the commission of the offence.

PW-1 Vazirkhan Fakirmahmad Shaikh Ex. 14
PW-2 Navabuddin A. Rasid Shaikh Ex. 16
PW-3 Devabhai Lubabhai Gamar Ex. 17
PW-4 Nijamuddin Nemuddin Sipahi Ex. 18
PW-5 Surendrasinh Madansinh Solanki Ex. 19
PW-6 Kayamuddin Sirajuddin Shaikh Ex. 20
PW-7 Fagnabhai Bhikhabhai Gamar Ex. 22
PW-8 Ravabhai Punabhai Gamar Ex. 24
PW-9 ASI Shivsinh Dursinh Rathod Ex. 31
PW-10 Head Constable Valjibhai Manglaji Ninama Ex. 33
PW-11 PSI Ramsinh Tilsinh Chauhan Ex. 34

5. The prosecution has also produced the following documentary evidence, they are as under:

1. Complaint Ex. 15
2. Panchnama of place of incident Ex. 21
3. Panchanama of body of the accused Ex. 23
4. Panchanama of the house of the accused Ex. 25 to 30
5. copy of the station diary Ex. 32
6. closing pursis given by complainant side Ex. 35

6. At the conclusion of the trial, further statement of the appellants were recorded under sec. 313 of CrPC.

7. On the basis of the evidence, the ld. Judge came to the conclusion that the prosecution has proved

beyond reasonable doubt that the appellants on 23.3.2002 at about 1.30 hrs. in the after-noon confronted the complainant who was travelling in his jeep car and robbed him of Rs. 11,300/- and set his jeep car on fire. The ld. Judge further held that all the appellants had a quarrel with the complainant and abused the complainant and, thereby they were also involved in the commission of the offence under sec. 504 of IPC. The ld. Judge held that the prosecution has established the case against the appellants of robbing the complainant of Rs. 11,300/-, and the learned Judge convicted appellants under sec. 395 read with sec. 114 of IPC. Thus, on the basis of the evidence on record of the case, the ld. Judge convicted all the appellants and passed the order of sentences as narrated hereinabove.

8. We have heard Mr. YS Lakhani learned advocate appearing for the appellants and Mr. KT Dave, learned APP appearing for the State at length and in great detail.

9. The ld. Advocate representing the appellants submitted that the prosecution has examined 11 witnesses and out of 11 witnesses, the deposition adduced by PW-4 Nijamuddin Nemuddin Sipahi Ex. 18,

PW-5 Surendrasinh Madansinh Solanki Ex. 19, PW-7 Faganabhai Bhikhabhai Gamar Ex. 22 and PW-8 Ravabhai Punabhai Gamar Ex. 24 is of no help as they have turned hostile and not supported the prosecution case. Ld. Advocate submitted that even the main prosecution witnesses have not supported the prosecution case in any manner whatsoever and, there are many contradictions in the deposition adduced by them. Even the documentary evidence does not provide the corroboration to indicate the involvement of the appellants, therefore, the benefit of the same is required to be given to the appellants. The ld. Advocate placed reliance on the deposition adduced by PW-1 Vazirkhan Fakirmahmad Shaikh Ex. 14 and submitted that in his deposition, he has given the number of the jeep car as GJ-9B-2386,while in the complaint given by him and produced at ex. 19, the number of the jeep car is mentioned as GJ-9B-2359, while on perusal of the deposition adduced by PW-2 Navabuddin A. Rasid Shaikh at Ex. 38, the number of the jeep car is mentioned as GJ-9B-3641. This shows that the number of the jeep car does not tally either in the oral deposition adduced by the prosecution witnesses or in the documentary evidence. As per the prosecution case, the complainant was

robbed of Rs. 11,300/- by Somaji as per the deposition given by PW-1 Vajirkhan Fakirmahmad Ex. 14. While deposition of PW-2 Navabuddin A. Rasid Shaikh Ex. 16, if perused in proper perspective then he has given the name of Lebabhai who took Rs. 11,300/- from the pocket of the complainant. Thus, there are many contradictions in the depositions adduced by the prosecution witnesses and when the lacuna in the evidence is so glaring then in such circumstances the benefit of doubt is required to be given to all the accused persons. Even the identification of the appellants has not been conclusively proved by the prosecution so as to establish their involvement in the commission of the offence. Thus, the learned advocate submitted that when the entire link connecting the appellants with the commission of the offence has not been duly established by the prosecution, the appellants are liable to the acquitted and, therefore, all the appellants be acquitted forthwith in the matter.

10. Ld. APP Mr. KT Dave representing the State submitted that the ld. Judge has taken into consideration the entire oral deposition and the documentary evidence on record of the case and

rightly convicted the appellants and there is no reason to interfere with the just and proper order of conviction and sentence passed by the ld. Judge and the judgment required to be upheld by dismissing the appeal.

11. The prosecution has examined 11 witnesses and placed reliance on the documentary evidence to prove the involvement of the appellants in the commission of the offence. On perusal of the deposition adduced by PW-1 Vajirkhan Fakirmahmad Shaikh Ex. 14, it becomes clear that the jeep car which was involved in the commission of the offence was having No. GJ-9B-2386 and it was stopped by the appellants and Somaji after stopping the vehicle took Rs. 11,300/- from the pocket of the complainant. Thereafter the jeep car was set on fire. The complaint at ex. 19 given by Vajirkhan Fakirmohmad Shaikh mentions the number of the vehicle as GJ-V-2359. In view of the deposition given by complainant and his complaint, there is clear contradiction in the number given by Vajirkhan Fakirmohmad Shaikh. Further on perusal of the deposition given by PW-2 Navabuddin A. Rasid Shaikh Ex. 16 the contradiction or inconsistency in the deposition really comes to the fore. On perusal of

the deposition given by PW-2 Navabuddin Ex. 16, he has given the number of the jeep car as GJ-9B-3641 and he has further deposed in his testimony that Lebabhai took Rs. 11,300/- from his pocket and thereafter set the jeep car on fire. On perusal of his cross-examination, he has voluntarily deposed that he was travelling in the jeep car No. GJ-9B-2359 for the purpose of paying the installment. While PW-10 Valji Mangalaji Ninama in his deposition at Ex. 33 has given the number of the jeep car as GJV – 2359. This makes it clear that there is complete inconsistency in the deposition adduced by the prosecution witnesses with regard to the involvement of the jeep car as well as robbing of complainant of Rs 11,300/-.Even the identification of the appellants is not established by the prosecution in conclusive manner. Thus,entire prosecution evidence is not dependable or trustworthy so as to establish involvement of the appellants in the commission of the crime. The prosecution, on perusal of the entire oral deposition and documentary evidences, in our view, has miserably failed to establish the entire link connecting the appellants with the commission of the crime by adducing cogent, convincing and conclusive evidence. In the light of the foregoing

discussion, since the prosecution has not established the entire link connecting the appellants with the commission of the crime, the appellants in our view, are liable to be acquitted forthwith. Hence, we pass the following order.

12. This appeal is allowed. All the appellants are acquitted for the offences punishable under sec. 395, 341, 435, 504 read with sec. 114 of IPC as well as under sec. 114 of B.P. Act and they are ordered to be set at liberty forthwith, if they are not required to be detained in jail in any other case.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

mandora/